

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**FRANK NELLUM,**  
**Plaintiff,**

**v.**

**EXELON CORPORATION, et al.,**  
**Defendants.**

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**Case No. 2:22-cv-1093-JDW**

**MEMORANDUM**

On March 14, 2022, this Court ruled that Frank Nellom had to wait for a favorable termination of the state charges against him before he could bring federal civil rights claims based on the falsity of those charges. See *Nellom v. Exelon Corp.*, No. 22-268, 2022 WL 784518 (E.D. Pa. Mar. 15, 2022) But, at least in this instance, patience has not proved to be one of Mr. Nellom's virtues. His claims fail again.

*First*, the Court will grant Mr. Nellom leave to proceed *in forma pauperis*. He has completed the form on the Court's website for applications to proceed without prepaying fees and costs and has attested under penalty of perjury that he cannot afford to pay the filing fees. He has established that he lacks the income or assets to pay the fees.

*Second*, Mr. Nellom's federal claims fail for the same reason they did before. When the Court dismissed Mr. Nellom's claims the first time, it told him he could not renew those claims unless and until he succeeded in challenging his convictions. He has not made any such showing. He just filed again. But nothing

has changed between the Court's dismissal and this new case, so the result is the same. The favorable resolution doctrine of *Heck v. Humphrey*, 512 U.S. 477 (1994) still bars his claims, so the Court will dismiss them without prejudice. If Mr. Nellom prevails in his challenge to those convictions, then, **and only then**, can he renew his Constitutional claims.

*Third*, and finally, the Court will dismiss Mr. Nellom's new claims for money damages under the Pennsylvania Constitution because there is no private right action for damages under the Pennsylvania Constitution. See *Jones v. City of Phila.*, 890 A.2d 1188, 1208 (Pa. Commw. 2006). Because there is no way for Mr. Nellom to prevail on those claims, the Court will dismiss them with prejudice.

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For the reasons stated, the Court will dismiss Mr. Nellom's federal claims without prejudice, and his claim under the Pennsylvania Constitution with prejudice. If Mr. Nellom files another, similar case without obtaining a favorable resolution of the convictions in state court, the Court will consider imposing sanctions on Mr. Nellom for his failure to heed this Court's Orders.

**BY THE COURT:**

/s/ Joshua D. Wolson

**JOSHUA D. WOLSON, J.**

May 5, 2022